

SEC. 341. PUBLIC-PRIVATE COMPETITION.

(a) Public-Private Competition Required Prior to Conversion of Certain Department of Defense Functions- Subsection (a) of section 2461 of title 10, United States Code, is amended to read as follows:

` (a) Public-Private Competition- (1) A function of the Department of Defense performed by 10 or more Department of Defense civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that--

` (A) formally compares the cost of performance of the function by Department of Defense civilian employees with the cost of performance by a contractor;

` (B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A-76, as implemented on May 29, 2003;

` (C) includes the issuance of a solicitation;

` (D) determines whether the submitted offers meet the needs of the Department of Defense with respect to factors other than cost, including quality and reliability;

` (E) examines the cost of performance of the function by Department of Defense civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Government over the life of the contract, including--

` (i) the estimated cost to the Government (based on offers received) for performance of the function by a contractor;

` (ii) the estimated cost to the Government for performance of the function by Department of Defense civilian employees; and

` (iii) an estimate of all other costs and expenditures that the Government would incur because of the award of such a contract;

` (F) requires continued performance of the function by Department of Defense civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by Department of Defense civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of--

` (i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

` (ii) \$10,000,000; and

` (G) examines the effect of performance of the function by a contractor on the military mission associated with the performance of the function.

` (2) A function that is performed by the Department of Defense and is reengineered, reorganized, modernized, upgraded, expanded, or changed to become more efficient, but still essentially provides the same service, shall not be considered a new requirement.

` (3) In no case may a function being performed by Department of Defense personnel be--

` (A) modified, reorganized, divided, or in any way changed for the purpose of exempting the conversion of the function from the requirements of this section; or

` (B) converted to performance by a contractor to circumvent a civilian personnel ceiling.'.

(b) Congressional Notification- Subsection (b) of such section is amended--

(1) in paragraph (1)--

(A) by striking `to analyze' and all that follows through `private sector' and inserting `a public-private competition under subsection (a)';

(B) in subparagraph (A), by striking `to be analyzed for possible change' and inserting `for which such public-private competition is to be conducted';

(C) in subparagraph (C), by inserting `Department of Defense' before `civilian employee';

(D) in subparagraph (D), by striking `the analysis' both places it appears and inserting `the public-private competition'; and

(E) in subparagraph (E)--

(i) by striking `commercial or industrial type' before `function'; and

(ii) by striking `persons who are not civilian employees of the Department of Defense' and inserting `a contractor';

(2) by striking paragraphs (2) and (3) and inserting the following new paragraph (2):

` (2) The report required under paragraph (1) shall include an examination the potential economic effect of performance of the function by a contractor on--

` (A) Department of Defense civilian employees who would be affected by such a conversion in performance; and

` (B) the local community and the Government, if more than 50 Department of Defense civilian employees perform the function.';

(3) by redesignating paragraph (4) as paragraph (3); and

(4) in paragraph (3), as so redesignated--

(A) in subparagraph (A)--

(i) by striking `where a commercial' and all that follows through `performance' and inserting `where a public-private competition is conducted'; and

(ii) by striking `the analysis' both places it appears and inserting `the public private competition'; and

(B) in subparagraph (B), by striking `the commercial' and all that follows through `to which objected' and inserting `the function for which the public-private competition was conducted for which the objection was submitted'.

(c) Consolidation and Restatement of Reporting Provisions-

(1) CONSOLIDATION AND RESTATEMENT- Section 2462 of such title is amended to read as follows:

` Sec. 2462. Reports on public-private competition

` (a) Report on Public-Private Competition Results- (1) Upon the completion of a public-private competition under section 2461 of this title, the Secretary of Defense shall submit to Congress a report containing the results of the public-private competition required by subsection (a) of such section.

` (2) Each report under this subsection shall include the following:

` (A) The date on which the public-private competition was commenced.

` (B) The number of Department of Defense civilian employees who were performing the function when the public-private competition was commenced and the number of such employees whose employment was or will be terminated or otherwise affected by converting to performance of the function by a contractor or by implementation of the most efficient organization of the function.

` (C) The Secretary's certification that the Government's calculation of the cost of performance of the function by Department of Defense civilian employees is based on an estimate of the most cost effective manner for performance of the function by Department of Defense civilian employees that meets the needs of the Department with respect to factors other than cost, including quality and reliability.

` (D) The Secretary's certification that the public-private competition did not include any predetermined personnel constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees.

` (E) The Secretary's certification that the entire public-private competition is available for examination.

` (F) In the case of a function performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant, a description of the effect that the manner of performance of the function, and administration of the resulting contract if

any, will have on the overhead costs of the center or ammunition plant, as the case may be.

` (G) A schedule for implementing the results of the public-private competition.

` (3)(A) No decision made on the basis of a public-private competition under section 2461 of this title may be implemented until after the submission of a report under paragraph (1).

` (B) Notwithstanding subparagraph (A), in the case of function performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant, the conversion of the function to performance by a contractor may not begin until at least 60 days after the submission of a report under paragraph (1).

` (b) Annual Report- Not later than June 30 of each year, the Secretary of Defense shall submit to Congress a written report, which shall include the following:

` (1) An estimate of the percentage of functions (other than functions that are inherently governmental) that Department of Defense civilian employees will perform and an estimate of the percentage of such functions that contractors will perform during the fiscal year during which the report is submitted.

` (2) The results of public-private competitions conducted under section 2461 of this title that were completed during the preceding fiscal year, including each of the following:

` (A) The number of such competitions completed during such fiscal year and the number of Department of Defense civilian employees performing functions for which such a competition was conducted.

` (B) The percentage of such competitions that resulted in the continued performance of a function by Department of Defense civilian employees.

` (C) The percentage of such competitions that resulted in the conversion of a function to performance by a contractor.

` (D) The percentage of the Department of Defense civilian employees identified pursuant to subparagraph (A) whose positions will be converted to performance by contractors or eliminated as a result of implementing the results of such competitions.

` (3) The results of monitoring the performance of Department functions under section 2461a of this title, including for each function subject to monitoring, each of the following:

` (A) The cost of the public-private competition conducted under section 2461 of this title.

` (B) The cost of performing the function before such competition compared to the costs incurred after implementing the conversion, reorganization, or

reengineering actions recommended pursuant to the competition.

` (C) The actual savings derived from the implementation of the recommendations made pursuant to such competition, if any, compared to the anticipated savings that were to result from the conversion, reorganization, or reengineering actions.'.

(2) WAIVER FOR SMALL FUNCTIONS AND CONFORMING AMENDMENTS- Section 2461 of such title, as amended by subsections (a) and (b), is further amended--

(A) by striking subsections (c), (d), (f) and (g); and

(B) by redesignating subsections (e) and (h) as subsections (c) and (d) respectively.

(3) CORRECTION OF TERMINOLOGY- The heading for subsection (c) of such section, as redesignated by paragraph (2), is amended by striking `Waiver' and inserting `Exemption'.

(d) Performance Monitoring- Section 2461a of such title is amended--

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(1) by striking subsections (a), (c), and (d);

(2) by redesignating subsections (b) and (e) as subsections (a) and (b) respectively;

(3) in subsection (a), as so redesignated--

(A) in paragraph (1)--

(i) by striking `establish a system for monitoring' and inserting `monitor'; and

(ii) by striking `a workforce review' and inserting `a public-private competition conducted under section 2461 of this title';

(B) in paragraph (2), by striking all and inserting the following:

` (2) In carrying out paragraph (1), the Secretary shall--

` (A) compare the cost of performing the function before the public-private competition to the cost of performing the function after the implementation of the results of the public-private competition; and

` (B) identify any actual savings of the Department of Defense after the implementation of the results of the public-private competition and compare such savings to the estimated savings identified pursuant to section 2461(a)(1)(E) of this title for that public-private competition;'; and

(C) in paragraph (3), by inserting `pursuant to such a public-private competition' after `reengineering of the function'; and

(4) in subsection (b), as so redesignated, by striking `workforce reviews' and inserting `public-private competitions conducted under section 2461 of this title'.

(e) Inapplicability to Best-Value Source Selection Pilot Program- Subsection (a)(1)(E) of section 2461 of title 10, United States Code, as amended by subsection (a), shall not apply with respect to the pilot program for best-value source selection for performance of information technology services authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1444; 10 U.S.C. 2461 note).

(f) Repeal of Redundant Provision- Section 2463 of such title is repealed.

(g) Clerical and Conforming Amendments-

(1) SECTION 2461- Section 2461(c) of such title, as redesignated by subsection (c), is amended by striking `Subsections (a) through (c) and subsection (g)' and inserting `This section'.

(2) HEADINGS-

(A) 2461- The heading for section 2461 of such title is amended to read as follows:

` Sec. 2461. Public-private competition required before conversion to contractor performance'.

(B) 2461(b)- The heading for subsection (b) of such section is amended to read as follows:

` (b) Congressional Notification- '.

(C) 2461a- The heading for section 2461a of such title is amended to read as follows:

` Sec. 2461a. Development and implementation of system for monitoring cost saving resulting from public-private competitions'.

(3) PUBLIC LAW 108-375- Section 327 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375; 10 U.S.C. 2461 note) is repealed.

(4) TABLE OF SECTIONS- The table of sections at the beginning of chapter 146 of title 10, United States Code, is amended by striking the items relating to sections 2461 through 2463 and inserting the following new items:

` 2461. Public-private competition required before conversion to contractor performance.

` 2461a. Development and implementation of system for monitoring cost saving resulting from public-private competitions.

` 2462. Reports on public-private competition.'.